IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1370 of 1982

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

ILA WD/O KANTILAL S DAVE - Appellant(s)
Versus
ROOPALE HOTEL & 4 - Defendant(s)

==========

Appearance :
None for Appellant(s) : None for Petitioner No(s).: for Appellant(s) : 1,MR ANAND L SHARMA for Appellant(s) : 1.2.1, 1.2.2, 1.2.3, 1.2.4,1.2.5
MR AP MEDH for Defendant(s) : 1 - 4.
NOTICE UNSERVED for Defendant(s) : 5,

==========

CORAM : HONOURABLE MR.JUSTICE M.R. SHAH
Date : 20/07/2006

ORAL JUDGMENT

By way of this Appeal, the appellant original-plaintiff has challenged the judgment and decree dated 14.9.1981 passed by the City

Civil Court at Ahmedabad in Civil Suit No. 1086 of 1978 decreeing the suit for an amount of Rs. 239.36 (Rupees Two Hundred Thirty Nine and paise Thirtysix only) and rejecting the Suit qua rest of the claim.

2. The plaintiff filed the said Civil Suit No. 1086 of 1978 before the City Civil Court at Ahmedabad against the defendants for a decree of Rs. 62,882.75 ps. It was pleaded in the suit that defendant No.1 and defendants No. 2 and 3 entered into a contract with the plaintiff relating to renovation of bath rooms in the hotel of defendant No.1; that initially it was agreed to renovate the bath room at the rate of Rs. 2,801 per bath room, however due to price hike a new agreement was entered into under which the rate of Rs. 3,600 was agreed for renovation of the bath room in place of original rate of Rs. 2,801; on the basis of that the plaintiff issued a final bill for the work done in 27 bath rooms

at Rs. 3,600 per bath room; and that the total bill amount which worked out to Rs. 97,200 was paid by the defendants in full without any objection. However as per the subsequent work the payment was made at the rate of Rs. 2,801 per bath room and that some amount was deducted on the basis of the certificate issued by Architect Vinodbhai for additional work leaving remaining amount of Rs. 44,647.75 ps., for which the aforesaid summary suit was filed. Subsequently the leave to defend was granted and accordingly the suit was considered as long cause suit.

3. The Suit was resisted by the defendants and written statement was filed. It was contended on behalf of the defendants that there was no additional fresh agreement as alleged by the plaintiffs enhancing the rate to Rs. 3,600 per bath room in place of Rs. 2,801, and that the said contract is a got up one. It is submitted that for additional work the amount was already

paid as per the certificate issued by the Architect Vinodbhai which was agreed by the plaintiff; therefore no amount is due and payable by the plaintiff; and therefore it was requested to dismiss the suit.

4. The learned Trial Judge framed the issues at Exh. 39. The plaintiff came to be examined at Exh. 45. The original-Agreement was produced at Exh. 46 for renovation of 27 bath rooms at the rate of Rs. 2,801 per room. It was the contention on behalf of the plaintiff that after 8 to 10 days only because of the price hike the 2nd agreement was entered into enhancing the rate of Rs. 3,600 per bath room and the same was produced at Exh. 42 as well as Exh. 72. On appreciation of the evidence on record, the learned Trial Judge held that there was no fresh/new agreement as alleged enhancing the rate to Rs. 3,600/- per path room instead of Rs. 2,801, and for that purpose the learned Trial

Judge relied upon subsequent correspondence more particularly the letter dated 19th October 1975 by which the plaintiff had made grievance and on the basis of which it could be proved that what was agreed by the plaintiff was R. 2,801 per bath room only. Considering the alternative plea of the plaintiff, the learned Trial Judge accepted the amount of Rs. 39,880.36 qua additional work as certified by Architect Vinodbhai, and considering the same the learned Trial Judge held that the plaintiff was entitled to pay Rs. 1,22,340.36 ps., and as an amount of Rs. 1,20,101 was paid, the balance amount due and payable was Rs. 2,239.36 ps., out of which the plaintiff was required to pay Rs. 2,000, and therefore the learned Trial Judge passed the decree for an amount of Rs. 239.36 ps., only, against which the plaintiff has preferred the present Appeal.

5. Shri Anand Sharma, learned advocate appearing on behalf of appellant, original-

plaintiff has submitted that the trial Court has materially erred in holding that there was no agreement and/or the new agreement for the amount of Rs. 3,600 per bath room was concocted one and/or not in existence at all. It is submitted that the learned Trial Judge has materially erred in relying upon the letter dated 19th October 1975 and has misread the said letter. It is submitted that in fact considering the price hike within 10 days itself the earlier contract was modified and the rate was enhanced to Rs. 3,600 per bath room from Rs. 2,801/- per bath room, and the plaintiff was entitled on the basis of new rate of Rs. 3,600 per bath room. It is submitted that the amount which was deducted on the basis of the certificate issued by the Architect Vinodbhai was also done behind the back of the plaintiff and without giving any opportunity and the same was against the principles of natural justice. It is, therefore, requested to allow the present Appeal.

6. This Court has considered the Judgment and Decree passed by the learned Trial Judge as well as the oral and documentary evidences. The original agreement entered into between the plaintiff and the defendants was dated 26th July 1974 by which the rate was fixed at Rs. 2,801 per bath room. It is the case of the plaintiff that within 8 to 10 days, the said rate was revised to Rs. 3,600 per bath room and the new agreement was entered into. It is required to be noted that, vide letter dated 19th October 1975, the very plaintiff, while making a grievance before the Architect, had submitted that at the relevant time the rate which was fixed at Rs. 2,801 was not proper and others were paid at higher rate. It is required to be noted that the said letter was dated 19th October 1975, i.e., after almost 8 to 10 months of the original agreement. If there would have been a fresh agreement, within 8 to 10 days of the 1st agreement, enhancing the rate to Rs. 3,600 per bath room as alleged on behalf of

the plaintiff, then in that case the plaintiff would not have written the letter dated 19th October 1975 making the grievance. Considering the letter dated 19th October 1975, the learned Trial Judge has rightly held that there was no additional agreement and/or fresh agreement within 8 to 10 days of the original-agreement enhancing the rate to Rs. 3,600 per bath room as alleged by the plaintiff. The learned Trial Judge has rightly read and interpreted the said letter and considered the conduct of the plaintiff. This Court is in complete agreement with the reasoning and finding of the learned Trial Judge.

7. So far as the contention on behalf of the appellant with regard to additional work done and the amount deducted on the basis of the certificate issued by the Architect is concerned, it is required to noted that the very plaintiff had agreed that whatever be the amount determined

by the Architect would be binding to him. It was also contended on behalf of the appellant that at least the amount as determined by the Architect Vinodbhai be considered and the same has been accepted by the learned Trial Judge and thereafter the decree has been passed for the amount of Rs. 239.36 and for rest of the claim the suit is dismissed. This Court is of the opinion that the appellant is entitled to only Rs. 239.36 ps., as held by the learned Trial Judge and no illegally has been committed by the learned Judge of the City Civil Court and/or the Judgment is not contrary to the evidence on record.

8. For the reasons stated above, there is no substance in the Appeal which is required to be dismissed and it is accordingly dismissed. No costs.

[M.R. Shah, J.]

RMR.